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5 Attorneys for Plaintiffs UNITED
6 BROTHERHOOD OF CARPENTERS
7 AND JOINERS OF AMERICA;
BUTCH PARKER; SCOTT FLANNERY;
WILLIAM CRAWFORD; and
TRUMAN JORDAN

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON**

21 Plaintiffs, by their attorneys DeCarlo, Connor & Shanley, a Professional
22 Corporation, as and for their Complaint, hereby allege as follows:

INTRODUCTION

24 1. For reasons that are arbitrary, discriminatory and in bad faith,
25 Defendant Metal Trades Department, AFL-CIO (“Metal Trades”), and its affiliated
26 Councils, including Defendant Hanford Atomic Metal Trades Council
27 (“HAMTC”), have violated their federal court created common law duty of fair
28 representation owed by these unions to their bargaining unit members here locally

1 and at virtually every other Metal Trades Council around the country.

2 2. Plaintiff United Brotherhood of Carpenters and Joiners of America
 3 (“UBC”) brings this action on behalf of all of its affected members, whose
 4 numbers run into the hundreds. The individually named Plaintiffs, Butch Parker
 5 and Scott Flannery, William Crawford and Truman Jordan bring this action on
 6 behalf of themselves because their employment has been negatively, substantially
 7 and adversely affected, including job loss.

8 3. As set forth in detail below, Defendants engaged in conduct based on
 9 arbitrary, discriminatory and bad faith reasons – which the Metal Trades’
 10 President, Ron Ault, openly admitted in an internal Memo. (“Admissions Memo”,
 11 attached as Exhibit “1” hereto). Ault admitted in the Memo and admitted at the
 12 Metal Trades’ convention that was held on or about November 2 & 3, 2011, that
 13 the Metal Trades changed its policies and took actions against UBC bargaining
 14 unit members for reasons that had nothing to do with the Metal Trades. For the
 15 Metal Trades and its affiliated Councils, including the HAMTC, to take any action
 16 for reasons unrelated to the legitimate interests of the Metal Trades violates its
 17 Duty of Fair Representation owed to its bargaining unit members.

18 4. Defendants’ conduct, includes, but is not limited to, removing
 19 stewards, forcing Plaintiffs’ members to join and pay dues to other unions in order
 20 to keep their jobs, and refusing to refer Plaintiffs’ members for employment. Such
 21 conduct has substantially and adversely impacting matters affecting employment,
 22 including the resulting loss of jobs and employment.

23 5. The reasons the Union Defendants changed its policies and took these
 24 actions had nothing to do with issues involving or related to the Metal Trades.
 25 According to the Defendant Metal Trades, the catalyst for its change in policies
 26 and subsequent conduct with respect to Plaintiffs was ***intra-union and extra-unit***
 27 ***disputes*** between the UBC and non-Metal Trades’ unions.

28 ///

1 6. By taking job-related actions based on a change in policies against the
2 Plaintiffs based on arbitrary, discriminatory and bad faith reasons, because of
3 issues involving non-Metal Trades unions and non-Metal Trades bargaining units,
4 Defendants violated its Duty of Fair Representation.

JURISDICTION AND VENUE

6 7. Subject matter jurisdiction is proper with this court under 28 U.S.C. §
7 1331 (federal question), § 1337 (commerce jurisdiction).

8 8. Personal jurisdiction and venue in this District are proper pursuant to
9 28 U.S.C. § 1391(b) because (1) Defendant HATMC is located and does business
10 in this District, (2) Defendants Metal Trades and HATMC committed and/or
11 directed the Acts alleged herein in this District, and/or (3) the ends of justice
12 require that those of the Defendants residing outside this District be brought
13 before the Court to answer for their conduct.

14 9. Plaintiffs' claims arise under the laws of the United States, to wit, the
15 federal court created common law duty of fair representation. *See, e.g., Vaca v.*
16 *Sipes*, 386 U.S. 171, 177 (1967).

PARTIES

18 10. Plaintiff UBC is an unincorporated voluntary association and a labor
19 organization as that term is defined in 29 U.S.C. § 152(5). One of the UBC's
20 missions and purposes is to protect and represent workers throughout North
21 America. It has approximately 500,000 members, including the hundreds that it
22 and the Defendant Metal Trades represent. The UBC is engaged in an industry
23 affecting commerce, within the meaning of 29 U.S.C. § 142(3).

24 11. The UBC is bringing this action on behalf of itself and the many
25 hundreds of its members and workers who work on non-Federal Labor Relations
26 Authority governed establishments and facilities. The UBC members have
27 standing in their own right based on the illegal conduct taken against them by the
28 Defendant Metal Trades which has resulted in substantial job-related injury and

1 damage. The interests the UBC seeks to protect on behalf of its members are
2 germane to the purpose of the UBC – which is to protect and represent workers.
3 In representing its members, the UBC has the authority to enter binding
4 agreements. Neither the claims asserted nor the relief requested requires the
5 participation of the individual members, whose numbers run into the many
6 hundreds (something admitted by the Metal Trades in its “Admissions Memo”).
7 The UBC has also suffered injury directly to its own interests and property. The
8 Defendants conduct has caused both a diversion of UBC resources and a
9 frustration of its mission protecting and representing its members.

10 12. Plaintiff Butch Parker is a member of the UBC and the Defendants,
11 and a steward until he was improperly removed by the Defendants.

12 13. Plaintiff Scott Flannery is a member of the UBC and the Defendants,
13 and a steward until he was improperly removed by the Defendants.

14 14. Plaintiff William Clayton Crawford is a member of the UBC and the
15 Metal Trades Department, and a steward until he was improperly removed by the
16 Defendant Metal Trades.

17 15. Plaintiff Truman Jordan is a member of the UBC and the Metal
18 Trades Department, and a steward until he was improperly removed by the
19 Defendant Metal Trades.

20 16. Defendant Metal Trades is an unincorporated voluntary association
21 and a labor organization as that term is defined in 29 U.S.C. § 152(5). Defendant
22 Metal Trades represents the Plaintiffs in an industry affecting commerce, within
23 the meaning of 29 U.S.C. § 142(3). Defendant Metal Trades is headquartered in
24 Washington, D.C. and represents members all over the country, including within
25 this judicial district. In engaging in the conduct alleged below, the Defendant
26 Metal Trades instigated, supported, ratified, encouraged, mandated and/or
27 directed, its subordinate bodies, including the HAMTC, to do the things alleged,
28 and/or the things done by its agents were in accordance with their fundamental

1 agreement of association.

2 17. Defendant HAMTC is located in Richland, Washington, and is an
3 affiliate of the Metal Trades and is an unincorporated voluntary association and
4 labor organization as defined in 29 U.S.C. § 152(5). Defendant HAMTC is
5 headquartered within this judicial district and also represents the Plaintiffs in an
6 industry affecting commerce, within the meaning of 29 U.S.C. § 142(3).

7 18. The following Metal Trades' subordinate council bodies from across
8 the country are non-party participants and have been controlled and directed by the
9 Metal Trades under threats of supervision, to take against, and have taken action
10 against, the Plaintiffs, in violation of the Duty of Fair Representation owed to the
11 UBC members. They include, but are not limited to, Albuquerque Metal Trades
12 Council; Amarillo Metal Trades Council; Bay Cities Metal Trades Council;
13 Eastern Idaho Metal Trades Council; Houston Metal Trades Council; Indian Wells
14 Valley Metal Trades Council; Lake Charles Metal Trades Council; New London
15 Metal Trades Council; New Orleans Metal Trades Council; Oak Ridge Atomic
16 Trades and Labor Council; Pacific Coast Metal Trades Council; Pascagoula Metal
17 Trades Council; Philadelphia Metal Trades Council; Portland Metal Trades
18 Council; Portsmouth Metal Trades Council; Puget Sound Metal Trades Council;
19 and Texas City Metal Trades Council.

20 19. Each of these Metal Trades Council affiliates are unincorporated
21 voluntary associations and labor organizations as that term is defined in 29 U.S.C.
22 § 152(5). Each also represents the Plaintiffs in an industry affecting commerce,
23 within the meaning of 29 U.S.C. § 142(3).

24 20. The conduct which forms the basis of Plaintiffs' claims for damages
25 occurred within the applicable statute of limitations.

26 21. Currently, there are no internal union remedies to exhaust before
27 filing this action. However, to the extent that there exists any obligation by the
28 Plaintiffs to exhaust any internal union remedies for any of the conduct alleged

1 herein is excused because (1) none have been identified by the Defendants despite
 2 a request and/or (2) such actions would be futile because of the conduct listed in
 3 the Admissions memo shows that the Defendants have abdicated their duties.

4 **CLAIM FOR RELIEF BY PLAINTIFFS AGAINST DEFENDANTS
 5 FOR BREACH OF THE DUTY OF FAIR REPRESENTATION**

6 22. Plaintiffs re-allege and incorporate by this reference each of the
 7 allegations set forth above.

8 23. A union has a “statutory obligation to serve the interests of all
 9 members without hostility or discrimination toward any, to exercise its discretion
 10 with complete good faith and honesty, and to avoid arbitrary conduct.” *Vaca v.
 11 Sipes*, 386 U.S. 171, 177 (1967). This duty is court-created and governs all non-
 12 Federal Labor Relations Authority regulated unions and bargaining units.

13 24. A union breaches its duty of fair representation when its actions are
 14 arbitrary, discriminatory or in bad faith. “[T]he duty of fair representation [is]
 15 breached where the union’s conduct was motivated by an employee’s lack of
 16 union membership, strifes resulting from *intraunion politicsBreininger v. Sheet
 17 Metal Workers Int’l Ass’n Local Union No. 6*, 493 U.S. 67, 78 (1989).

18 25. Defendant Metal Trades is a bargaining unit representative for
 19 hundreds of Plaintiff UBC’s members, including the individually named Plaintiffs,
 20 involving numerous employer relationships from around the country. For
 21 instance, such relationships exist in states, including but not limited to,
 22 Washington, Oregon, Idaho, California, New Mexico, Louisiana, Texas,
 23 Mississippi, Connecticut. As such, it owes a duty of fair representation to UBC
 24 members.

25 26. Plaintiff UBC’s members, including the individually named Plaintiffs,
 26 are also Metal Trades’ bargaining unit members. Individual Plaintiffs Butch
 27 Parker and Scott Flannery are also members of the HAMTC bargaining unit.

28 ///

1 27. Defendant Metal Trades has created a database or has compiled
2 reports from its affiliates and agents describing the various bargaining units and
3 the hundreds of UBC members it represents.

4 28. Defendants have violated their duty of fair representation towards the
5 Plaintiffs by changing its policies and conduct that is arbitrary, discriminatory
6 and/or in bad faith.

7 29. Defendants' unlawful conduct towards the Plaintiffs includes, but is
8 not limited to: (a) threatening, expelling and/or removing UBC member stewards
9 from their jobs and whose substantial job duties included policing agreements with
10 employers and grieving violations that affected represented members; (b)
11 intentionally depriving UBC members of representatives of their own choosing in
12 connection with their employment; (c) threatening, forcing and/or directing UBC
13 members – under compulsion of forced termination and/or removal from their
14 substantial job-related positions – to resign their membership with the UBC and/or
15 join other unions in order to retain their jobs and/or obtain representation; (d)
16 refusing to respond to UBC members' requests for or access to information related
17 to the bargaining unit; and/or (e) refusing UBC members a say at meetings or on
18 the job concerning contract negotiations, strategies, grievances, disputes and/or
19 other bargaining unit related issues.

20 30. In changing their policies and taking these actions against their
21 bargaining unit members, who are also UBC members, Defendants totally
22 abdicated their fiduciary responsibilities under federal law as a "representative" of
23 the bargaining unit members.

24 31. Defendants took these actions against the Plaintiffs, not for any valid,
25 legitimate, or rational reason, or for non-discriminatory, consistently applied or
26 job-related reasons. Defendants changed its policies and took these adverse job
27 related actions for reasons that are arbitrary, discriminatory and/or in bad faith.
28 ///

1 32. Defendant Metal Trades' President, Ron Ault, candidly admits that
2 there is no legitimate, rational, legitimate, non-discriminatory reason to take any of
3 these adverse employment-related actions against the Plaintiffs. He admits that
4 "these Carpenters locals have been productive, active participants in our Metal
5 Trades Councils, respecting the rights of the other Council affiliates in jurisdiction
6 and supporting them in other matters."

7 33. Defendants changed its policies and took these actions to satisfy non-
8 Metal Trades complaints. In other words, Defendants took these actions because
9 other unions in other crafts and trades involving non-Metal Trades' bargaining
10 units had a problem with the UBC.

11 34. Ault and the Metal Trades' General Counsel, Robert Matisoff, an
12 attorney with O'Donohue & O'Donohue, a law firm located in Washington D.C.,
13 admitted at the Metal Trades' convention recently held in Las Vegas that the Metal
14 Trades changed its policies and took the actions against the Plaintiffs to satisfy
15 non-Metal Trades' issues and complaints.

16 35. Defendant Metal Trades' President Ault also explained in the Memo
17 he wrote that: "the Building Trades General Presidents have authorized a
18 campaign to ***push back*** against the Carpenters." ("Admissions Memo", Exhibit
19 "1" hereto.) Ault explained that the Metal Trades thus changed its policies and
20 took action "***because of*** on-going problems between the Carpenters and the
21 Building Trades ***in other units and in other locations . . .***" (*Id.*) These actions
22 were taken for reasons unrelated to the interests of the Plaintiffs or the Metal
23 Trades as a fiduciary bargaining representative of the Plaintiffs.

24 36. Defendants recognized that their actions were unlawful. They knew
25 they should not change their policies and take any actions against the Plaintiffs
26 because such actions are "***improperly motivated*** by ***extra-unit*** considerations
27 (that is, resulting from disputes with ***Building Trades*** unions in other places),
28 rather than because of any action the Carpenters locals have taken against the

1 Metal Trades Department or its Councils.” (Italics in original; emphasis added.)

2 37. www.respectourcrafts.comAs admitted by Defendant Metal Trades’
 3 President, the change in policies and actions taken, and continue to be taken,
 4 against the Plaintiffs is because of ***intra-union and extra-unit political and***
jurisdictional disputes between some unnamed Building Trades unions and the
UBC which involve non-Metal Trades’ issues and non-Metal Trades’
bargaining units. Defendants’ conduct is thus arbitrary, discriminatory and in bad
 8 faith, and unlawful.

9 38. The Plaintiffs are not basing this lawsuit on a claim or allegation that
 10 the terms of any Solidarity Agreements between the Metal Trades and the UBC
 11 was breached. The Plaintiffs’ claims do not arise under, and are not based on, the
 12 terms of any Solidarity Agreement. There is no dispute over the application or
 13 interpretation of any Solidarity Agreements, whose terms expired on or about July
 14 31, 2011.

15 39. Rather the Plaintiffs bring this lawsuit based on external laws and
 16 rights which exist independently of any Solidarity Agreement. These external
 17 laws, and independent rights, demonstrate that Defendants’ conduct was unlawful.

18 40. As part of their actions, the Metal Trades’ President has repeatedly
 19 threatened any non-cooperating affiliate, including but not limited to HAMTC,
 20 with immediate supervision and removal of officers if they refuse to follow or
 21 implement his directives. The Metal Trades’ President has directed its affiliates,
 22 including but not limited to HAMTC, that all issues, questions and actions
 23 involving the Plaintiffs will be directed and handled out of his office. Therefore,
 24 the Metal Trades is responsible for all of its affiliates’ conduct, including the
 25 HAMTC.

26 41. Defendants’ breach of their Duty of Fair Representation has
 27 substantially impacted the Plaintiffs’ relationships with employers. Defendants’
 28 breach of their Duty of Fair Representation has adversely impacted matters

1 affecting Plaintiffs' employment, including, but not limited to, removing Plaintiffs
 2 as stewards from jobs, refusing Plaintiffs attendance and participation in job-
 3 related meetings, preventing Plaintiffs from receiving information about their jobs,
 4 contracts, grievances and/or negotiations, instructing employers to refuse to deal
 5 with Plaintiffs, directing and instructing representatives to negotiate or attempt to
 6 negotiate agreements removing any rights Plaintiffs have, including, *inter alia*, the
 7 right to select UBC stewards, the right of UBC members to be dispatched to jobs,
 8 the right of Plaintiffs to file, pursue and handle grievances for UBC members.

9 42. Defendants' breach of their Duty of Fair Representation has also
 10 adversely impacted matters affecting the Plaintiffs' employment, including but not
 11 limited to, directing or forcing, or attempting to direct or force, members to pay
 12 dues to other unions rather than the UBC under threat of removal from their jobs
 13 and/or employment.

14 43. Defendants' breach of their Duty of Fair Representation has directly
 15 targeted the Plaintiffs and proximately caused Plaintiffs damages, including, but
 16 not limited to, loss of jobs, work assignments, administrative time, resources, fees
 17 and expenses, and loss of other rights.

18 44. Plaintiffs are entitled to damages in an amount proven at trial and to
 19 injunctive relief fully restoring the Plaintiffs' rights and prohibiting the Metal
 20 Trades, HAMTC, or anyone else involved from interfering with such rights in any
 21 way in the future.

22 WHEREFORE, the Plaintiffs respectfully requests that this Court:

23 1. Grant the Plaintiffs judgment for damages and pre-judgment interest
 24 according to proof at trial;

25 2. Grant the Plaintiffs punitive damages according to proof at trial;

26 3. Grant the Plaintiffs their costs, disbursements and reasonable
 27 attorneys' fees.

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1 4. Enter a declaratory judgment that the Defendants' conduct
2 complained of herein has violated the law;

3 5. Grant the Plaintiffs a preliminary and permanent injunction enjoining
4 the Defendants, and their officers, agents, successors, employees, affiliated
5 Councils, and all others acting in concert with any of them, from engaging in any
6 further conduct that violates the Defendants' Duty of Fair Representation towards
7 the Plaintiffs.

8 6. Order the Defendants to restore all rights and privileges of the
9 Plaintiffs, including but not limited to, rescinding the Defendants' change of
10 policies, including but not limited to revocation of the Solidarity Agreements, and
11 restoring Plaintiffs to their prior positions with all attendant rights and
12 responsibilities; and

13 ||| 7. Grant such other relief as the Court may deem just and equitable.

REQUEST FOR TRIAL BY JURY

15 Plaintiffs hereby request a trial by jury as to all Claims for Relief asserted in
16 this Complaint.

17 || DATE: November 29, 2011

**DeCARLO, CONNOR & SHANLEY
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